

**BEFORE THE**

**SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE**

**OF THE**

**HOUSE COMMITTEE ON ENERGY AND COMMERCE**

**HEARING ON**

**“BALANCING PRIVACY AND INNOVATION:**

**DOES THE PRESIDENT'S PROPOSAL TIP THE SCALE?”**

**MARCH 29, 2012**

**TESTIMONY OF**

**MICHAEL ZANEIS**

**SENIOR VICE PRESIDENT AND GENERAL COUNSEL**

**INTERACTIVE ADVERTISING BUREAU**

Chairman Bono Mack, Ranking Member Butterfield, and Members of the Subcommittee, good morning and thank you for the opportunity to speak at this important hearing.

My name is Michael Zaneis. I am Senior Vice President and General Counsel of the Interactive Advertising Bureau (“IAB”). Founded in 1996 and headquartered in New York City, IAB ([www.iab.net](http://www.iab.net)) represents over 500 leading companies that engage in and support the sale of interactive advertising, including prominent search engines and online publishers. Collectively, our members are responsible for selling over 86% of online advertising in the United States. IAB educates policymakers, consumers, marketers, agencies, media companies and the wider business community about the value of interactive advertising. Working with its member companies, IAB evaluates and recommends standards and practices and fields critical research on interactive advertising. IAB has also led, with other prominent trade associations, the development and implementation of cross-industry self-regulatory privacy principles for online data collection, which is the program known as the Digital Advertising Alliance (“DAA”).

The IAB appreciates the Subcommittee’s interest in exploring how consumer privacy concerns should be balanced with consumers’ desire for innovative products and services. We believe that industry self-regulation, coupled with consumer education, is the best way to strike this balance. Industry self-regulation is flexible and can adapt to rapid changes in technology and consumer expectations, whereas legislation and government regulation can stifle innovation.

## **I. Benefits of Online Advertising**

The Internet is a tremendous engine of economic growth. It has become the focus and a symbol of the United States' famed innovation, ingenuity, inventiveness, and entrepreneurial spirit, as well as the venture funding that follows. Simply put: the Internet economy and the interactive advertising industry creates jobs. A 2009 IAB study found that more than three million Americans are employed due to the advertising-supported Internet, contributing an estimated \$300 billion, or approximately 2%, to our country's GDP.<sup>1</sup> There is Internet employment in every single congressional district.<sup>2</sup>

Advertising fuels the Internet economic engine. Revenues from online advertising support and facilitate e-commerce and subsidize the cost of content and services that consumers value, such as online newspapers, blogs, social networking sites, mobile applications, email, and phone services. Because of advertising support, consumers can access a wealth of online resources at low or no cost. These advertising-supported resources have transformed our daily lives. The support provided by online advertising is substantial and growing despite the difficult economic times. In the first half of 2011, Internet advertising revenues reached a new high of \$14.9 billion, an impressive 23% higher than the same period the previous year.<sup>3</sup>

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<sup>1</sup> Hamilton Consultants, Inc. with Professors John Deighton and John Quelch, *Economic Value of the Advertising-Supported Internet Ecosystem*, at 4 (June 10, 2009), available at <http://www.iab.net/media/file/Economic-Value-Report.pdf>.

<sup>2</sup> *Id.* at 53.

<sup>3</sup> Interactive Advertising Bureau Press Release, "Internet Ad Revenues at Nearly \$15 Billion in First-Half 2011, Up 23%, Second Quarter 2011 Breaks Record Again" (September 28, 2011) (reporting results of PricewaterhouseCoopers study).

Interest-based advertising is an essential form of online advertising. As the Subcommittee knows, interest-based advertising, also called behavioral advertising, is delivered based on consumer preferences or interests as inferred from data about online activities. Consumers are likely to find interest-based advertisements more relevant than random messages, and advertisers are more likely to attract consumers that want their products and services. Websites also benefit because interest-based advertising garners better responses, allowing websites to earn more revenue – and support more content and services – with fewer advertisements.

Interest-based advertising is especially vital for small businesses. Smaller advertisers can stretch their marketing budgets to reach consumers who may be interested in their offerings. Smaller website publishers that cannot afford to employ sales teams to sell their advertising space, and may be less attractive to large brand-name advertising campaigns, can increase their revenue by featuring advertising that is more relevant to their users. In turn, advertising-supported resources help other small businesses to grow. Nearly two-thirds of U.S. small businesses use online tools, such as travel booking and networking services, to help them run their companies.

Recent research highlights the importance of interest-based advertising. During the Subcommittee’s September 15, 2011, hearing on “Internet Privacy: The Impact and Burden of EU Regulation,” the Subcommittee heard testimony from Professor Catherine Tucker about the effect on advertising performance of the European Union’s e-Privacy Directive, which limits the ability of companies to collect and use behavioral data to deliver relevant advertising. Professor

Tucker's research on this question found that the e-Privacy Directive was associated with a 65% drop in advertising performance, measured as the percent of people expressing interest in purchasing an advertised product. The study also found that the adverse effect of such regulation was greatest for websites with content that did not relate obviously to any commercial product, such as general news websites.

In general, the data used for interest-based advertising is not personally identifiable, except when consumers choose to provide personally identifiable information. Nevertheless, the advertising industry recognizes and respects that some consumers may prefer not to receive such advertising. I will be updating the Subcommittee on the tremendous efforts of our industry to make sure that consumers have transparency about online behavioral advertising, and that consumers can exercise control over their preferences – including opting out, if they so desire.

## **II. Industry Self-Regulation of Online Data Practices**

### **A. Implementation Update on Digital Advertising Alliance**

Today, I would like to highlight for the Subcommittee the latest developments in the DAA Self-Regulatory Program for online data collection, which was recently recognized by the White House as “an example of the value of industry leadership as a critical part of privacy protection going forward”<sup>4</sup>.

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<sup>4</sup> Speech by Danny Weitzner, *We Can't Wait: Obama Administration Calls for A Consumer Privacy Bill of Rights for the Digital Age* (February 23, 2012), available at <http://www.whitehouse.gov/blog/2012/02/23/we-can-t-wait-obama-administration-calls-consumer-privacy-bill-rights-digital-age> (last visited March 16, 2012).

The DAA initiative was led by the IAB along with other leading trade associations: the American Association of Advertising Agencies (“4A’s”), American Advertising Federation (“AAF”), Association of National Advertisers (“ANA”), and Direct Marketing Association (“DMA”). Our trade associations collectively represent more than 5,000 U.S. corporations across the full spectrum of businesses that have shaped and participate in today’s media landscape. Our record amply demonstrates the merits of industry self-regulation.

As the Subcommittee has heard in prior testimony, the Self-Regulatory Principles for Online Behavioral Advertising (“OBA Principles”) were released in July 2009, following a roadmap set forth by the Federal Trade Commission.<sup>5</sup> Following additional dialogue with the Commission, in November 2011, the DAA extended the OBA Principles with the release of the Self-Regulatory Principles for Multi-Site Data (“MSD Principles”). The MSD Principles establish comprehensive self-regulatory standards governing the collection and use of “multi-site data,” defined as data collected from a particular computer or device regarding Web viewing over time and across non-affiliated Websites. The MSD Principles build on the DAA’s existing implementation and accountability efforts, including the enforcement programs administered by the DMA and the Council of Better Business Bureaus (“CBBB”).

The DAA’s distinctive Advertising Option Icon is a key feature of the Self-Regulatory Program. Launched in 2010, the Advertising Option Icon is now a familiar sight across the Internet. Participating companies serve the Icon in or around advertisements as a uniform way to

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<sup>5</sup> Federal Trade Commission Staff Report, *Self-Regulatory Principles for Online Behavioral Advertising* (February 2009), available at <http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf>.

provide consumers with transparency and choice in compliance with the Self-Regulatory Principles.

Over the past year, the DAA has achieved several significant milestones in its implementation of the Self-Regulatory Program:

- The Icon is being served in nearly 1 Trillion ad impressions per month.
- We believe that the DAA program now covers over 90% of the online behavioral advertising being delivered, based on the participation of the top 15 U.S. ad networks.
- Today, the DAA program has more than two thousand companies licensed to use the Advertising Option Icon (“Icon”) (including leading global advertisers like American Express, AT&T, Disney, General Motors and Kraft Foods). Not only is the DAA working directly with large publishers – it has also forged innovative partnerships to enable small business publishers to display the Icon on their web sites for free.
- The DAA’s AboutAds website ([www.aboutads.info](http://www.aboutads.info)) provides consumers with information about online advertising and provides an easy-to-use opt out mechanism. There have been over 5 million page views at AboutAds.info since its inception about a year ago.
- Shortly after the launch of AboutAds.info, in December 2010, there were about 4,300 page views per week, with 36% of visitors to Aboutads.info coming from the Icon. At

this time, there are approximately 520,000 page views per week, a dramatic increase that is tied directly to the broad adoption and proliferation of the Icon.

- In November 2011, the CBBB announced its first enforcement cases.
- In December 2011, the DAA began to offer tools that enable persistent consumer opt outs in Chrome and Firefox browsers. The DAA released a persistency tool for users of Internet Explorer in March 2012.
- In January 2012, the DAA launched an education campaign to inform consumers about interest-based advertising and how to take greater control of their online privacy. This multi-phase online campaign, designed by McCann Erickson Worldwide, includes banner advertising that directs consumers to the DAA's Icon and links to a new, informational website, [www.youradchoices.com](http://www.youradchoices.com), which features three educational videos and a user-friendly consumer choice mechanism. The website has already had over 2.3 million page views since its launch. To continue driving traffic to this website, the DAA has secured nearly 2 Billion pro bono ad impressions from companies participating in the Program.

We expect that the DAA Self-Regulatory Program will continue to adapt over time to respond to changes in technology and consumer concerns. Currently, the DAA has convened a subcommittee of its Communications and Advisory Committee that is working to extend the Principles to the mobile ecosystem.



## **B. Benefits of Industry Self-Regulation**

The IAB's commitment to self-regulation has put us at the forefront of new consumer protection initiatives. The IAB believes that self-regulation is the appropriate approach for addressing the interplay of online privacy and online advertising practices. This approach has been successful in addressing consumer concerns while ensuring that the U.S. Internet economy can continue to thrive. Self-regulation provides industry with a nimble way of responding to new challenges presented by the evolving Internet ecosystem. For our information-driven economy to thrive and continue as an engine of job creation, self-regulation led by industry codes of conduct is the ideal way to balance privacy and innovation.

Based on the IAB's commitment to advancing industry self-regulation, we are concerned about some of the proposals recently put forward by the Obama Administration and the Federal Trade Commission in their respective consumer data privacy frameworks. In particular, both the Administration and the Federal Trade Commission have called for comprehensive legislation in the area of consumer data privacy. The IAB does not believe that such new legislation is needed at this time. There has been no demonstration that legislation is needed or any evaluation of legislation's likely impact on this leading area of American job creation. IAB is concerned that laws and regulations are inflexible and can quickly become outdated in the face of evolving technologies. When this occurs, legislation thwarts innovation and hinders economic growth.

Formal rules can also serve as a disincentive to the marketplace to innovate in the area of privacy. Companies are increasingly offering consumers new privacy features and tools such as sophisticated preference managers, persistent opt outs, universal choice mechanisms, and

shortened data retention policies. These developments demonstrate that companies are responsive to consumers and that companies are focusing on privacy as a means to distinguish themselves in the marketplace. IAB believes that this impressive competition and innovation should be encouraged. New laws or rules could impede future developments or discourage companies from continuing to compete over privacy features.

### **III. Remarks on the Federal Trade Commission Framework**

The IAB is similarly concerned that new proposals put forward this week by the Federal Trade Commission could impede economic growth and innovation. In particular, I would like to highlight for the Subcommittee the potential negative consequences of the Commission's call to single out "data brokers" for new restrictions.

The term "data broker" has no widely accepted definition, and the definition proposed in the Commission's framework is extremely broad. The Commission defines a "data broker" as a company that collects information from a variety of sources for the purpose of reselling such information to customers for purposes including marketing.<sup>6</sup> This definition is far broader than the definition contained in the prior legislation referenced in the Commission's report. In fact, virtually every publisher site, advertiser, ad network, or analytics firm collects or shares data with other parties in order to make the digital economy work, and would be at risk of falling within the category proposed by the Commission.

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<sup>6</sup> FTC Report, "Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers" (March 2012).

Data access legislation based on such an expansive definition could harm the most fundamental operations of the Internet. As the Commission itself recognizes in its report, “the costs of providing individualized access and correction rights [for data used solely for marketing purposes] would likely outweigh the benefits.”<sup>7</sup> Online advertising data is not generally personally identifiable and is not generally maintained in a format that would be meaningful to consumers. Providing individual access and correction rights for such data, for most companies operating today, would be prohibitively costly and could require the collection of personally identifiable information that would not otherwise be collected. Thus, to avoid unintended and counterproductive outcomes, it would be essential to carefully and narrowly define the entities that would be covered by any new legislative or self-regulatory proposals aimed at “data brokers.”

#### **IV. Development of Industry Codes of Conduct**

As the Administration considers the appropriate approach for facilitating stakeholders’ development of privacy codes of conduct, the IAB believes that it is essential to build on – rather than undermining – effective self-regulatory initiatives that already exist.

##### **A. Survey of Existing Self-Regulation**

First, the Administration, through the National Telecommunications and Information Administration (“NTIA”), should target only those issues that are not subject to existing statutory regimes or self-regulatory programs. This would serve two main purposes. It would allow NTIA to identify and replicate the common attributes among initiatives that have resulted in

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<sup>7</sup> *Id.* at 65.

successful standards and programs. In addition, this type of survey would help NTIA to ensure that the multistakeholder process is not revisiting areas that are already covered by existing codes.

The business community has invested significant resources to develop effective codes of conduct and accountability mechanisms to address specific privacy concerns. It is important that the Administration avoid disrupting these existing industry codes in order to avoid consumer confusion and duplicative or contradictory obligations for businesses. For instance, the IAB has established a Member Code of Conduct, to which all IAB members are required to adhere.<sup>8</sup> Our Code builds on the DAA's Self-Regulatory Program, which establishes principles for the collection and use of Web viewing data for purposes such as online behavioral advertising.<sup>9</sup> These are among many industry initiatives that have resulted in robust, voluntary programs that promote best practices designed to protect consumers while fostering economic growth and market innovation. The NTIA should not in any way interfere where there are already industry developed standards in place.

## **B. Room for Private Negotiations**

Second, NTIA should take steps to foster industry participation in the proposed process, specifically by recognizing the important role of private negotiations. The Administration has proposed an open and transparent process to develop codes of conduct. This goal should be balanced with ample room for companies to engage in private discussions. In the IAB's

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<sup>8</sup> IAB Website, "IAB Member Code of Conduct," available at [http://www.iab.net/public\\_policy/codeofconduct](http://www.iab.net/public_policy/codeofconduct).

<sup>9</sup> Digital Advertising Alliance Website, available at [www.aboutads.info](http://www.aboutads.info).

experience as a leader of self-regulatory initiatives, such private negotiations promote the frank exchange of ideas and can help participants to reach consensus despite divergent views.

Companies operate in competitive marketplaces. They have little incentive to share proprietary information in a public forum, especially when other participants have a history of using information against companies as a basis for litigation or media scrutiny. Thus, while some stages of the multistakeholder process may present periodic opportunities for transparency, such as to solicit feedback, the IAB encourages the Administration to structure a process that emphasizes private discussions among industry representatives.

### **C. Industry Leadership**

The IAB's experience also shows that industry leadership in drafting codes is important to achieving a workable balance of privacy and innovation. The business community is in a unique position to understand both technological limitations and consumer expectations. These insights are critical to create effective but feasible standards that can be adopted and implemented broadly by industry.

The example of the DAA Self-Regulatory Program illustrates the merits of industry negotiation and leadership. Hundreds of companies, including IAB members, are now participating in this program. In line with the Administration's vision for codes of conduct, the underlying Self-Regulatory Principles were generated through a multistakeholder process involving 11 trade associations and 25 companies that met regularly to achieve consensus. Discussions were largely private with input provided at appropriate stages by government agencies and private advocacy groups. This effort, which has been universally applauded,

resulted in comprehensive principles and the unique Advertising Option Icon to foster consumer-friendly standards across the Internet data ecosystem. This model demonstrates the potential for codes of conduct to attract widespread voluntary participation. This was done without government funding or government-convened forums.

#### **D. Government Role as Facilitator**

NTIA should have a limited role in the multistakeholder process. The Administration has stated that “the stakeholders themselves will control the process and its results.”<sup>10</sup> We urge the Administration to adhere to its commitment that the agency will not substitute its own judgment when stakeholders are developing codes of conduct.<sup>11</sup> As the White Paper states, “there is no Federal regulation at the end of the process.”<sup>12</sup> Thus, to achieve the voluntary adherence sought by the Administration, the IAB believes that industry leadership will provide the best opportunity for success.

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Thank you again for inviting me to testify before the Subcommittee. I look forward to answering any questions the Subcommittee may have.

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<sup>10</sup> The White House, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* 24 (February 2012) (hereinafter “White House Framework”).

<sup>11</sup> *Id.* at 27.

<sup>12</sup> *Id.* at 24.